

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRUCE W. BODDY and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Louisville, Ky.

*Docket No. 97-620; Submitted on the Record;  
Issued September 14, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation, effective June 23, 1996, on the grounds that he had no continuing disability from his accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,<sup>1</sup> when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>2</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased,<sup>3</sup> even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.<sup>4</sup>

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>5</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate

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<sup>1</sup> 5 U.S.C § 8101 *et seq.*

<sup>2</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

<sup>3</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>4</sup> *John Watkins*, 47 ECAB \_\_\_\_ (Docket No. 94-1615, issued May 17, 1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

<sup>5</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>6</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>7</sup> The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>10</sup>

In this case, appellant's notice of traumatic injury, filed on December 13, 1990, was accepted for bilateral shoulder strains and a resultant somatiform pain disorder.<sup>11</sup> The Office paid appropriate compensation and issued schedule awards for permanent partial impairment of both shoulders.<sup>12</sup>

On May 9, 1996 the Office issued a notice of proposed termination, based on the reports of Dr. Martin G. Schiller and Robert L. Keisler, both Board-certified orthopedic surgeons. The Office provided appellant with 30 days to submit additional evidence or argument showing why compensation should not be terminated. Appellant responded to the notice with a personal

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<sup>6</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>7</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

<sup>8</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

<sup>9</sup> *Connie Johns*, 44 ECAB 560, 570 (1993).

<sup>10</sup> *Gary R. Sieber*, 46 ECAB 215, 223 (1994).

<sup>11</sup> Somatization disorder is characterized by the multiplicity and persistence of complaints of pain without evidence of physical disease. *The Merck Manual*, 1590-91 (16th ed. 1992). Appellant, an electrical worker, claimed that he hurt his left shoulder on December 12, 1990 while pulling cable through the ceiling. Appellant continued to work until August 1993, switching to the Department of the Treasury in 1992, except for time off for arthroscopic surgery in May 1992.

<sup>12</sup> Appellant received a schedule award for a seven percent permanent impairment of the right upper extremity, which ran from September 30, 1993 to March 1, 1994. On January 10, 1993 appellant received a schedule award for a four percent permanent impairment of the left upper extremity, which ran from October 16, 1992 to January 11, 1993.

statement disagreeing with the physicians' reports and stating that he would obtain a report from his treating physician, Dr. Jeffrey N. Fadel, an orthopedic practitioner.

On June 13, 1996 the Office terminated appellant's compensation, effective June 23, 1996, on the grounds that appellant had no continuing disability resulting from the accepted injury. The Office noted that appellant's cervical condition was not causally related to the 1990 work injury.

Appellant requested reconsideration and submitted a May 20, 1996 report from Dr. Fadel, who stated that his "feeling" was that appellant was "still incapacitated" and that his "specific problems" make it impossible for him to do the type of laborious work for which he was trained. Dr. Fadel repeated these statements in a July 8, 1996 report and also completed an OWCP-5 form, releasing appellant to work two hours a day with limitations of kneeling on occasion, limitless standing, no reaching above the head, and no lifting more than five pounds.

On August 26, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office noted that Dr. Fadel's reports included no objective findings and merely restated his opinion provided in earlier reports.

The Board finds that the weight of the medical opinion evidence rests with the reports of the impartial medical examiner and the psychiatrist that appellant has no continuing disability from the accepted work injuries.

Because Dr. Fadel and Dr. Schiller disagreed over whether appellant's cervical disc problems were related to the initial work injury and whether appellant was capable of working full time,<sup>13</sup> the Office properly referred appellant to an impartial medical examiner to resolve the conflict.<sup>14</sup> In a report dated April 28, 1994, Dr. Keisler summarized appellant's medical history and the results of objective tests and his physical examination of appellant's shoulders. Dr. Keisler noted his impression of degenerative disc disease of the cervical spine, with chronic cervical pain, probable bilateral chronic subacromial tendinitis of both shoulders, and possible radiculopathy.<sup>15</sup> He stated that the dominant problem was emotional, with clear magnification and exaggeration of symptoms, and falsification of range of motion testing, and recommended psychiatric treatment.

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<sup>13</sup> Dr. Fadel stated that appellant's cervical condition was related to the December 12, 1990 injury because appellant's symptoms stemming from both shoulders and his neck were mixed and that he could work only four hours a day in a sedentary job. Dr. Schiller stated in a February 14, 1994 report that appellant magnified his symptoms and overreacted upon physical examination. He added that the disc narrowing seen on the June 21, 1993 magnetic resonance imaging (MRI) was not related to the 1990 work injury but was caused by preexisting degenerative changes. Dr. Schiller concluded that appellant would not admit to being able to go back to work and recommended a psychological evaluation.

<sup>14</sup> See *Dallas E. Mopps*, 44 ECAB 454, 456 (1993) (finding that the Office properly referred the claim to an impartial medical examiner because of a conflict in the opinions of a psychiatrist and an psychologist).

<sup>15</sup> Radiculopathy is defined as disease of the nerve roots. *Dorland's Illustrated Medical Dictionary* (25th ed. 1988).

In response to the Office's questions, Dr. Keisler stated there was no evidence that a specific cervical injury was sustained at work or elsewhere and that degenerative disc disease was a common condition whose symptoms presented spontaneously. Dr. Keisler noted that overhead work and abnormal twisting positions would exacerbate appellant's shoulder conditions, resulting in pain symptoms. Dr. Keisler added that when appellant's tendinitis symptoms first occurred he was able to do his work; it was not until significant emotional and cervical symptoms began that appellant's inability to work became apparent.

The Office referred appellant to Robert H. O'Connor, a Board-certified psychiatrist, who examined appellant and reviewed the results of psychological testing. Dr. O'Connor diagnosed somatiform pain disorder and a mild, single episode, major depressive disorder related to the initial work injury and subsequent pain, but stated that these conditions would not prevent appellant from returning to work.

In a follow-up report dated November 6, 1995, Dr. Keisler stated that appellant had "clearly improved emotionally" and an "adequate objective examination" of his shoulders was "essentially normal." He added that there was no objective evidence of residual impairment, based on x-rays that showed no abnormality and a physical examination.

By contrast, Dr. Fadel provided no medical rationale for his conclusions that appellant could work only two hours a day and that "his job irritated his cervical discs." Essentially, his reports simply repeat appellant's subjective complaints and provide no clinical findings in support of any work-related disability. In fact, Dr. Fadel noted the normal results of a nerve conduction study in September 1992 and an electromyogram in June 1993 as well as the MRI testing in June 1993 and July 1995 that showed slight bulging at C4-5 and C6-7 with a small herniated disc at C5-6. While Dr. Fadel disagreed with Dr. Keisler's evaluation, he is not an orthopedic specialist. Therefore, his reports are insufficient to create a conflict in the medical opinion evidence.<sup>16</sup>

Inasmuch as Dr. Keisler reviewed the medical records, a statement of accepted facts, and various diagnostic test results, examined appellant thoroughly, and provided a detailed and well-rationalized medical explanation of why appellant had no continuing disability from the accepted shoulder injury, the Board finds that his conclusion, as buttressed by Dr. O'Connor's report that appellant's somatiform pain disorder caused no disability, represents the weight of the medical evidence and is sufficient to carry the Office's burden of proof.<sup>17</sup>

The August 26 and June 14, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

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<sup>16</sup> See *Thomas Bauer*, 46 ECAB 257, 265 (1994) (finding that the additional report from appellant's physician concerning his emotional condition was insufficient to overcome the special weight accorded to the impartial medical examiner's opinion).

<sup>17</sup> See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that physician's opinion was thorough, well rationalized, and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

Dated, Washington, D.C.  
September 14, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member